HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Petition No.14603 OF 2007

Between:

The Senior Divisional Manager,
United India Insurance Company Limited,
Hyderabad

. . .Petitioner

AND

Singamena Komala and another

. . .Respondents

:: ORDER ::

Counsel for the petitioner : Shri R.Brizmohan Singh

10th July, 2007

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Per G.S.SINGHVI, CJ

This is a petition for quashing orders dated 18.12.2006 and 16.3.2007 passed by District Consumer Forum, Karimnagar (for short, 'the District Forum') and Andhra Pradesh State Consumer Disputes Redressal Forum, Hyderabad (for short, 'the State Commission') respectively.

Respondent No.1 is the widow of late Singamena Pochalu @ Pochaiah. She filed a complaint before the District Forum under Section 12 of the Consumer Protection Act, 1986 (for short, 'the Act') and prayed for issue of a direction to the management of United India Insurance Company Ltd. (hereinafter referred to as 'the insurance company') to pay insurance amount of Rs.1 lakh including accidental benefit with interest @ 18% per annum, Rs.5,000/- as compensation for mental agony, Rs.2,000/- towards expenses and costs. The claim of respondent No.1 was founded on the following assertions:

1) that her husband Singamena Pochalu @ Pochaiah was having Savings Account (S.B.A/c.No.14624) in Jammikunta Branch of Andhra Bank (for short, 'the bank');
2) that with the opening of Savings Bank Account with the bank, her husband became entitled to the benefits of Abhaya Savings Bank Accountholders Group Personal Accident Policy, for which an agreement had been executed between the bank and the insurance company on 31.8.2003;
3) that on 4.6.2004, her husband was, while crossing the railway track between Uppal and Jammikunta at KM No.334/97, hit by the running train and was killed;
4) that the investigation made by the Railway Police established that her husband was hit by the running train and died on that account, and

5) that after the death of her husband, she lodged claim for payment of amount in terms of the policy, but the insurance company rejected the same on the basis of report dated 25.10.2004 prepared by its investigator.

Respondent No.1 pleaded that in terms of the policy, she had become entitled to insurance amount because her husband was killed in an accident.

In the counter filed by the petitioner, it was averred that the complainant's husband was not supposed to cross the railway track; that Sri Pochalu volunteered to take the risk by crossing the railway track against the statutory cautions and, therefore, his death cannot be treated as one caused due to accident, and that as per the police investigation, it was a case of suicide and not an accidental death.

In support of her claim, respondent No.1 produced documents marked Exs.A.1 to A.5. The representative of the petitioner produced documents, which were marked Exs.B.1 to B.12. The District Forum, after considering the pleadings of the parties and the documentary evidence produced by them, concluded that death of Pochalu @ Pochaiah was caused due to accident and that the complainant's case is covered by the insurance policy. The District Forum rejected the insurance company's plea that the death of Sri Pochalu falls within the exception enumerated in Clause 7 (ii)(a) of the insurance policy and held that the complainant has been able to establish the fact that her husband had died due to accident. Accordingly, the petitioner was directed to pay a sum of Rs.1,00,000/- with interest @ 9% per annum from the date of complaint i.e. 7.1.2006 and Rs.1,000/- towards costs. Paragraphs 8, 10 and 11 of order dated 18.12.2006 passed by the District Forum read as under:

> "8. The husband of the complainant during his lifetime had Abhaya Gold Account bearing number 1462 with the opposite party no.1. Ex.A.1 is the pass book issued by the opposite party No.1 in favour of the deceased husband of the complainant. It was issued for coverage of group personal accident insurance scheme of the

opposite party. The opposite party No.1 to cover the risk of the Abhaya Gold customers of the opposite party No.1. The husband of the complainant was hit by a running train while crossing the railway track between Uppal and Jammikunta at KM No.334/97 on 4.6.2004. The Railway Police has registered a case in Crime Number 123 of 2004 under Section 174 of Cr.P.C. and conducted inquest under Ex.A.3 over the body of the deceased. Final result submitted by the Railway Police to the Executive Magistrate shows the cause of death of the deceased as railway accident. The Post Mortem Examination Report issued by the Doctor, Government Hospital, Paddepalli contains the details of the injuries found on the body of the deceased. The cause of death as per the opinion of the doctor is head injury.

10. The learned counsel for the opposite party has contended that the insured had committed suicide as per the investigator's report and as such the nature of death falls under Exception No.7 (ii)(a) 5 of the Insurance Policy. The opposite party No.2 and the Head Office of the opposite party No.1 had entered into an agreement under Ex.B.1 for the insurance of the risk of the Abhaya Gold Account Holders of the opposite party No.1. Ex.B.9 is the copy of the Insurance Policy. These documents need no discussion in view of the admitted position that the Abhaya Gold customers of the opposite party No.1 in hiding the deceased husband of the complainant were provided insurance coverage by the opposite party No.2 in agreement with the opposite party No.1. The learned counsel for the opposite party No.2 submitted that the complainant has submitted application under Ex.B.11 stating that her husband committed suicide as he could not bear the pressure of the creditors and that the relatives of the deceased have informed the investigation that the deceased committed suicide. The complainant has stated to the police that her husband died in the train accident. The police after investigation concluded that the deceased died accidentally. The doctor who conducted the post mortem examination over the body of the deceased is of the opinion that the deceased died due to head injury. Hence, we hold that the husband of the complainant died accidentally in the railway accident that occurred on 4.6.2004 and the opposite party has committed deficiency in service by obtaining the letter under Ex.B.11 from the complainant in support of this case.

11. The sum payable under the Abhaya Gold Scheme is Rs.1,00,000/-. The opposite party No.1 has admitted in their affidavit the said sum assured under Ex.A.1 passbook issued by it in favour of the husband of the complainant. Opposite party No.2 repudiated the claim even after receiving several reminders under Ex.B.1 to B.4 and Ex.B.6 from opposite party No.1, and the same was informed to the complainant by the opposite party No.1. the opposite parties have not paid the insurance amount to the complainant and subjected her to mental tension and hardship. Therefore, we hold that the

complainant is entitled to Rs.1,00,000/- towards the sum assured under the insurance policy along with interest @ 9% per annum from the date of the complaint i.e. 7.1.2006 till payment and Rs.1,000/- towards costs."

The State Commission dismissed the appeal preferred by the petitioner. It relied on the inquest report (Ex.A.3) and held that the same was sufficient for proving that the death of late Shri Pochalu was caused due to accident. The last paragraph of order dated 16.3.2007 passed by the State Commission reads as under:

> "We have gone through the documents filed by the appellant Exs.B9 and B11 to prove that it is a suicide. The District Forum has elaborately discussed and given a finding that the investigation report and other documents cannot be relied upon and the documents filed by the complainant disclose that it is an accidental death. We have gone through the documents filed by the complainant. Ex.A.1 is the pass book issued by the opposite party No.1 and as per this, it is evident that the deceased has taken a policy. Ex.A.2 is the attested copy of FIR. Ex.A.3 is the attested copy of the inquest report. These documents clearly establish that the death of the deceased is an accidental death. The appellant contended that the documents filed by the complainant pertain to criminal case which cannot be relied for the purpose of this case. The submission made by the appellant is not sustainable. The First Information Report, Inquest Report and final report filed by the police itself disclose that it is an accidental death. There is no dispute that the complainant's husband has taken insurance policy as per the pass book Ex.A.1. On account of train accident, the complainant's husband died. It is an accidental death. We see no reason to interfere with order of the District Forum. There are no grounds to admit the appeal. The appeal is dismissed at the admission stage."

Shri Brizmohan Singh, learned counsel for the petitioner referred to the provisions of Abhaya Savings Bank Accountholders Group Personal Accident Policy to show that the same envisages payment of insurance amount in the event of accidental death and not otherwise and argued that the District Forum and the State Commission committed serious error by awarding insurance amount of Rs.1,00,000/- to respondent No.1 ignoring the investigator's report, which revealed that Sri Pochalu had committed suicide. He then

argued that the inquest report submitted by the Railway Police could not have been made basis for holding that the death of the deceased was caused due to accident because none from the Railway Police had been examined as witness.

We have considered the arguments of the learned counsel, but have not felt impressed. In our opinion, the writ petition is liable to be dismissed for more than one reason, which are enumerated below:

1) A reading of the orders under challenge shows that the District Forum and the State Commission relied on the inquest report (Ex.A3) and concurrently held that the death of Sri Pochalu was caused due to rail accident. It can, thus, be said that Ex.A3 is the crucial document for determining whether or not the husband of respondent No.1 died due to accident. However, the petitioner has deliberately omitted to place on record copy of the inquest report (Ex.A3). It can reasonably be presumed that the petitioner has done so with an oblique motive of keeping this Court in dark about the true contents of the inquest report prepared by the Railway Police immediately after the accident. This conduct of the petitioner is highly contumacious and disentitles it from any relief under Article 226 of the Constitution of India. It is settled law that in exercise of power under Article 226 of the Constitution, the High Court will never come to the aid of a person who is guilty of concealing/suppressing material facts or information or making a false statement - **Hari Narain v. Badri Das**[1], **Welcome Hotel and others v. State of Andhra Pradesh and others etc.**[2], **G. Narayanaswamy Reddy and others v. Governor of Karnataka and another**[3], **S.P.Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) by L.Rs. and others**[4], **Nand Lal and others v. State of Jammu and Kashmir and another**[5].

2) The finding recorded by the District Forum that the death of Sri Pochalu was caused due to accident is based on appreciation of the

evidence produced by the parties. Investigation report dated 25.10.2004 submitted by the petitioner's investigator cannot be relied for discarding the inquest report dated 4-6-2004, which was prepared on the date of accident. Even otherwise, the self-serving report of the investigator cannot be made basis for recording a finding that Sri Pochalu had committed suicide.

The scope of judicial review of judicial and quasi-judicial orders is extremely limited. The power of judicial review vested in the High Court under Article 226 of the Constitution of India can be exercised in such matters only if it is shown that the adjudication made by the quasi-judicial authority suffers from any jurisdictional infirmity or is vitiated due to violation of the rules of natural justice or the findings recorded by the concerned authority are vitiated by an error of law apparent on the face of the record. This Court can scrutinise the matter to satisfy itself that the decision-making process is not tainted by arbitrariness, mala fides or violation of the rules of natural justice, but cannot sit in appeal over the actual decision except when it is shown to be perverse.

A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals or quasi-judicial authorities. A writ can also be issued where, in exercise of jurisdiction conferred on it, the Court or the Tribunal or quasi-judicial authority acts illegally or improperly, i.e., it decides a question without giving an opportunity of hearing to the party affected by the order or where the procedure adopted by it is opposed to the principles of natural justice. However, it must be remembered that the jurisdiction of the High Court to issue a writ of certiorari is supervisory in nature and not appellate one. This necessarily means that the finding of fact reached by the inferior Court, Tribunal etc., as a result of the appreciation of evidence, cannot be reopened or questioned in writ proceedings except when the judgment, order or award suffers from an error of law apparent on the face of the record. An error of law is one which can be discovered

on a bare reading of the judgment, order or award under challenge along with the documents which have been relied upon by the inferior Court, Tribunal or quasi-judicial authority. An error, the discovery of which is possible only after a detailed scrutiny of the evidence produced by the parties and lengthy debate at the bar cannot be regarded as an error of law for the purpose of a writ of certiorari. A finding of fact recorded by an inferior Court or Tribunal or quasi-judicial authority can be corrected only if it is shown that in recording the said finding, the Court etc., had erroneously admitted inadmissible evidence and the same has influenced the impugned finding. Similarly, a finding of fact based on no evidence would be regarded as error of law which can be corrected by issuing a writ of certiorari. However, sufficiency or adequacy of the evidence relied upon by the inferior Court of Tribunal or quasi-judicial authority cannot be gone into by the High Court while considering the prayer for issue of a writ of certiorari. Likewise, mere possibility of forming a different opinion on re-appreciation of evidence produced by the parties is not sufficient for issue of a writ of certiorari - **Syed Yakoob v. K.S. Radhakrishnan**[6], **Mohd. Shahnawaz Akhtar & Anr. v. Ist ADJ Varanasi & ors.**[7], **Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others**[8], **R.S. Saini v. State of Punjab and others**[9], **Surya Dev Rai v. Ram Chander Rai**[10].

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP.No.18361 of 2007 filed by the petitioner for interim relief is also dismissed.

G.S.SINGHVI, CJ

10th July, 2007

C.V.NAGARJUNA REDDY, J

SVS

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[1] AIR 1963 SC 1558

[2] AIR 1983 SC 1015

[3] AIR 1991 SC 1726

[4] JT 1993 (6) SC 331

[5] AIR 1960 J & K 19

[6] AIR 1964 SC 477

[7] JT 2002 (8) SC 69 = (2002) 9 SCC 375

[8] AIR 1970 SC 61

[9] JT 1999 (6) SC 507 = (1999) 8 SCC 90

[10] AIR 2003 SC 3044